

**Exhibit A – Attachment to Motion to Suppress**

STATE OF CALIFORNIA - COUNTY OF SANTA CLARA, SW NO. \_\_\_\_\_

# SEARCH WARRANT

CSW39553

COPY

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY PEACE OFFICER IN  
THE COUNTY OF SANTA CLARA:

Proof by affidavit and under penalty of perjury having been sworn to this day before me by

Duane Tuell

that there is probable

cause for believing that the property and/or person described below may be found at the location(s)  
set forth below and is lawfully seizable pursuant to Penal Code Section 1524 as indicated below by "x"(s) in that it:

- ☐ was stolen or embezzled
- ☐ was used as the means of committing a felony
- ☐ is possessed by a person with the intent to use it as means of committing a public offense or is possessed by another to whom he or she may have delivered it for the purpose of concealing it or preventing its discovery
- ☐ tends to show that a felony has been committed or that a particular person has committed a felony
- ☐ tends to show that sexual exploitation of a child, in violation of Penal Code Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring
- ☐ there is a warrant to arrest the person
- ☒ when property is a firearm or deadly weapon pursuant to Penal Code section 12028.5
- ☐ when property is a firearm or deadly weapon pursuant to Welfare and Institutions Code section 8102
- ☐ when property is a firearm or deadly weapon pursuant to Family code section 6389 or 6218;

YOU ARE THEREFORE COMMANDED TO SEARCH:

The premises at **3157 Midhurst Court, San Jose**; further described as a single family residential. The house faces east and is located in a cul-de-sac, gray in color with green trims, and is marked with a placard labeled "3157" on the side of the garage, and all rooms, attic, garage and storage areas.

The search of a white panel van with California license plate #5S33665 registered to "Fab For You" on 180 Lewis Road Ste 15 in San Jose. "Fab For You" is owned by the suspect.

FOR THE FOLLOWING PROPERTY/PERSON:

Removal of three (3) locked safes and gain access by any means necessary to seize any firearms contained therein, including but not limited to the following registered firearms:

- 1) SER/N061491 MAK/WAL CARL WALTHER CAL/22 TYP/P PISTOL MOD/P22CAMILIT
- 2) SER/386156659 MAK/FNB FAB NAT DARMES D GUE CAL/5728 TYP/P PISTOL MOD/FN57US
- 3) SER/P11941 MAK/STE STEYR CAL/9 TYP/PI PISTOL SEMI-AUTOMATIC MOD/GB
- 4) SER/AAV204US MAK/GLC GLOCK,INC CAL/9 TYP/PI PISTOL SEMI-AUTOMATIC MOD/19
- 5) SER/125405 MAK/HEC HECKLER & KOCH CAL/9 TYP/PI PISTOL SEMI-AUTOMATIC MOD/P9S
- 6) SER/136095 MAK/HEC HECKLER & KOCH CAL/9 TYP/PI PISTOL SEMI-AUTOMATIC MOD/P9S
- 7) SER/D8765 MAK/FOZ CESKA ZBROJOVKA FOX CAL/9 TYP/PI PISTOL SEMI-AUTOMATIC MOD/CZ85B
- 8) SER/109020 MAK/HEC HECKLER & KOCH CAL/9 TYP/PI PISTOL SEMI-AUTOMATIC MOD/P9S
- 9) SER/A21775 MAK/STE STEYR CAL/9 TYP/PI PISTOL SEMI-AUTOMATIC MOD/SPP
- 10) SER/2118626 MAK/HEC HECKLER & KOCH CAL/9 TYP/PI PISTOL SEMI-AUTOMATIC MOD/SP 89

VAR-000049

11) SER/211534 MAK/HEC HECKLER & KOCH CAL/9 TYP/PI PISTOL SEMI-AUTOMATIC MOD/SP-89

12) SER/45588 MAK/WAL CARL WALTHER CAL/32 TYP/PI PISTOL SEMI-AUTOMATIC MOD/MANURHINPP

AND TO SEIZE IT/THEM IF FOUND and bring it/them forthwith before me, or this court, at the courthouse of this court. This Search Warrant and incorporated Affidavit was sworn to as true before me this 24th day of JUNE, 2010, at 3:00 ~~AM~~ / P.M. Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

*Paul R. Teile*

[Signature of Magistrate]

Judge of the Superior Court, County of Santa Clara  
(revised 1.19.10) D# \_\_\_\_\_



HOBBS SEALING APPROVED: YES [ ] NO [ ]  
NIGHT SEARCH APPROVED: YES [ ] NO [ ]

PAUL R. TEILE

SEARCH WARRANT RETURN/RECEIPT  
SAN JOSE POLICE DEPARTMENT

DATE 6/24/10 TIME 1600 CASE NO. 10-170-0272  
 ADDRESS 3157 MIDHURST CT. WARRANT NO. CSW 39553  
 OFFICER/BADGE A. NGUYEN #3435 UNIT Family Violence Unit EXT. 2773700  
D. TWEEL #3284

NO.	DESCRIPTION	LOCATION
1	GLOCK 19 SERIAL # AAV 20Y	BACK OF VAN IN BOXES
2	HK .45 AUTO BARREL SERIAL # 25-059604	↓
3	FORBUS PADDEL HOLSTER	↓
4	HK USP TACTICAL .45 AUTO (NO BARREL) SERIAL 25-059604	MASTER BEDROOM SAFE
5	MAG 1 SLIDE	↓
6	HECKLER+KOCH P9S SERIAL # 136-095	LIVING ROOM SAFE
7	WALTHER MOD. PP SERIAL 45588	
8	JENNINGS FIREARMS INC J-22 ser. 183010	
9	FNH BELGIUM ser. 386156659	
10	CZ 75 KADET D8765 ser A 377497	
11	FED. ORD INC (MISSING SLIDE) ser 109020	
12	CZ 85B CAL. 9 LUGER D8765 (MISSING RECEIVER)	
13	COLT SPORTER LIGHTWEIGHT CAL 7.62x39 SERIAL H0079583	
14	A.C.T. INC BWK-92 ser. 306342	
15	LIBERTY II CALICO ser. T000412	
16	LIBERTY I CALICO ser. R000140	
17	COLT SPORTER LIGHTWEIGHT CAL 223 ser. SL016131	
18	DEAI GSG-5 CAL 22 LR HV ser. A774798	
19	COLT SPORTER LIGHTWEIGHT CAL 9mm AUTO ser. NL003912	
20	COLT MATCH TARGET COMPETITION HBAR II CAL. 223 ser. CTC 004488 / #SCOPE: MC STAR 3-9x42RE	
21	COLT SPORTER LIGHTWEIGHT CAL. 7.62x39 w/SCOPE: TASC0 DWCP1040x50 AT-98.8' ser. LH006430	
22	STUM RUGER RANCH RIFLE CAL. 7.62x39 w/SCOPE SHIMMONS M1048 ser. 581-09848	
23	HK SP89 CAL 9mm x19 ser. 21-15341	
24	UNKNOWN MAKE/MODEL UPPER RECEIVER	
25	UNKNOWN MAKE/MODEL BOTTOM RECEIVER	

26) GO MAGAZINES

WHITE - COURT

PINK - CASE FILE

CANARY - PREMISE

Page 1 of 2  
202-53 11/05

VAR-000051

[illegible]

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**STATEMENT OF PROBABLE CAUSE**

My name is Duane Tuell. I have been a peace officer for the city of San Jose Police Department from March 1996 to November 2006 and then from March 2009 to present day. I am currently assigned to the Family Violence Unit and have been assigned to this Unit since November 2009.

My training and experience are as follows: As an officer, I have served in the Patrol Division. I have served as the Administrative Officer for both the Pre Processing Center and for the Bureau of Field operations. During the course of my career, I have investigated many criminal cases, including but not limited to homicides, thefts, assaults, burglaries, robberies, narcotics offenses, vehicular crimes and domestic violence crimes. As a patrol officer, I have responded and assisted in Domestic Violence investigations. I have interviewed victims, witnesses and suspects.

Since being assigned to the Family Violence Unit, I have participated in the investigation of approximately 146 Domestic Violence cases. My participation in these cases includes the interviewing of victims, witnesses and suspects. My participation has also included the preparation of reports, the review of reports, the filing of cases and the collection of evidence.

On June 22, 2010, I was assigned to assist in the investigation of a violation of Penal Code section 242-243(e), which occurred at approximately 6:10 a.m. on June 19, 2010. The victim, Lynda Vargem, reported being involved in a verbal argument with her husband STEVEN VARGEM (DOB: 9-21-1960). During this argument, VARGEM assaulted the victim causing complaint of pain. Officer DeOliveria of the San Jose Police Department went to 3157 Midhurst Crt. and contacted the victim. The victim told Officer DeOliveria that she and VARGEM were married with two children in common. On June 18, 2010 at approximately 9:30 p.m. she and VARGEM argued about her giving a neighbor a box fruit. VARGEM continually ridiculed the victim for approximately one hour, until both parties fell asleep. The next morning on 6/19/2010 at approximately 6:10 a.m., upon waking up VARGEM began cursing at the victim. Then at

1 approximately 6:20 a.m. the victim exited the bedroom. VARGEM followed her into the family  
2 room and continued to belittle her. VARGEM grabbed the victim's right bicep from behind. The  
3 victim pulled away from the VARGEM and turned and faced VARGEM. VARGEM used two  
4 hands in a choke / strangulation maneuvers and grasped the victim's neck. VARGEM squeezed the  
5 victim's neck for approximately 5 – 6 seconds. The victim had trouble breathing, but did not loose  
6 consciousness. VARGEM shook the victim back and forth approximately 2 times. VARGEM  
7 continued to use vulgarities towards the victim as he shook her. VARGEM then pushed the victim,  
8 causing her to fall to the floor. The victim was in great fear for her safety. Their daughter, witness  
9 Ashley Vargem, observed VARGEM push the victim. The witness and VARGEM became  
10 involved in a verbal argument. The victim got dressed, left the house and called the police  
11 department to report the incident. The victim returned to her home and was contacted by officers.  
12 The victim had no visible injuries but complained of pain to her neck. The victim was issued an  
13 EPRO at the scene. VARGEM was the listed restrained party on the EPRO. The EPRO required  
14 that VARGEM surrender all firearms in his possession.

15 On 6/22/2010, at approximately 3:30 p.m. I conducted a search of law enforcement  
16 databases to determine if there were any firearms registered to STEVEN LEE VARGEM and  
17 discovered that there were twelve firearms currently registered to VARGEM.

18 On 6/24/2010 at approximately 6:30 a.m. I checked the custody status of VARGEM and  
19 determined that he had been allowed to post bail and that he had been released from custody.

20 On 6/24/2010, at approximately 10:30 a.m. I contacted the victim to conduct follow up  
21 investigation on this case and to inquire about the status of the firearms registered to VARGEM.  
22 The victim informed me that she did not have access to the safes containing the firearms. The  
23 victim further stated that prior to the physical assault by VARGEM on 6/19/2010, the two became  
24 involved in a verbal argument. During the argument, the victim told VARGEM, "I am done with  
25 this. I'm done." The victim told me that VARGEM replied with something to the affect of 'You're

1 right. You are done, I am finishing this right now.' The victim stated that VARGEM then grabbed  
2 her and began his assault. The victim stated that if the witness had not entered the room and  
3 became involved, she believed that VARGEM would "finish" her. The victim stated that  
4 VARGEM had a "crazed look that she had never seen before." The victim told me that she had  
5 seen VARGEM return a "pistol" to the gun safe locked in the family room of their residence  
6 approximately 2 months ago. The victim stated that VARGEM is very secretive about the firearms  
7 and the safes. The victim stated that VARGEM would become angry with her and yell at her if she  
8 entered the room when the safes were open.

9 Based on my training and experience, people who own firearms continue to retain them as  
10 assets and continue to possess them for long periods of time. Therefore, I believe based on my  
11 training and experience that VARGEM would still be in possession of the firearms registered to  
12 him.

13 On June 24, 2010 at approximately 1:20 p.m. I again spoke with the victim to determine  
14 what types of vehicles VARGEM may have access to. The victim informed me that VARGEM had  
15 a Silver GMC YUKON XL Ca. license #4VNL510 and a White Panel Van Ca. license # 5S33665  
16 which he uses for work. The Silver GMC YUKON XL Ca. license #4VNL510 is registered to  
17 Vargem, Steven L and DBA FAB FOR YOU INC, with an address at 180 Lewis Rd. The white  
18 panel van # 5S33665 is registered only to VARGEM'S company/work of DBA FAB FOR YOU  
19 INC.

20 On June 24, 2010 at approximately 1:29 p.m. I called VARGEM to obtained permission to  
21 retrieve all firearms in his possession. When VARGEM answer his cell phone (408-202-8443) I  
22 identified myself as 'Duane Tuell a Police Officer with the city of San Jose. I verified with  
23 VARGEM that he had a restraining order against him and that as such he had the responsibility to  
24 surrender all firearms. I further advised VARGEN that he was in violation of the restraining order  
25 and subject to arrest. VARGEM stated that all of his firearms were either 'sold' or 'transferred'. I



1 directly asked him if he was telling me there were no firearms in the safes? VARGEM stated that  
2 he did not know. I then asked VARGEM for the combinations to his safes. He told me that he  
3 would have to discuss the request with his lawyer. I told him that I would prepare a search warrant  
4 and seize the firearms without his consent. VARGEM asked if he could call me right back at the  
5 Family Violence Unit. VARGEM did not call back

6 After speaking to VARGEM and determining that he would not provide me with permission  
7 to search his safes, I requested that a patrol unit be stationed at the residence until I could arrive  
8 with a search warrant. I informed the district sergeant C. Anaya of VARGEM's description and the  
9 description of possible vehicles that VARGEM had access to. Units then advised me on scene that  
10 upon their arrival, a white van was parked in the driveway and was being loaded with unknown  
11 items. The van was VARGEN's White Panel Van Ca. license # 5S33665. Patrol officers affected a  
12 vehicle stop of the van and determined that it was being driven by VARGEN. VARGEN was in  
13 violation of the EPRO previously granted to the victim.

14 Pursuant to Penal Code section 1524(a)(9), a search warrant may be issued when the  
15 property to be seized include a firearm or any other deadly weapon at the scene of or at premises  
16 occupied or under the control of a person arrested in connection with a domestic violence incident  
17 involving a threat to human life or a physical assault. Based on the fact that VARGEM is the  
18 restrained party in an EPRO, is required to surrender all firearms in his possession and is the only  
19 one in possession of the combinations to the safes where his firearms are stored, a search warrant is  
20 authorized to seize the firearm in this case.

21 Based upon the foregoing, it is my opinion that I have probable cause to believe and I do  
22 believe that the items sought are lawfully seized and are presently at and on the premises to be  
23 searched. Wherefore, I seek issuance of this Search Warrant.